REMARKS/ARGUMENTS

In an Office Action mailed on December 6, 2005, claims 1-25 were rejected and/or objected to. Applicants request reconsideration of the pending claims in view of the following remarks.

I. Rejection under 35 U.S.C. 102(b)

Claims 1 and 13 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,432,607 (the Taubenblatt reference).

With respect to claims 1 and 13 the Applicants assert that the Taubenblatt reference fails to disclose measuring the cross polarization components of the diffracted beams during the azimuthal scan.

As an initial matter, Applicants assert that it is well known that "cross polarization" refers to changing polarization state between incident polarization and outgoing polarization. For example, in the present specification, page 10, paragraph [0025] describes:

> "As the azimuth scan is performed, all four polarization terms R_{pp}, R_{sp}, R_{ps}, and R_{ss} change. The cross-polarization terms, R_{sp}, R_{ps}, are typically small in quantity relative to the in-polarization terms, R_{ss}, R_{pp}."

Consistent with well known nomenclature, the cross-polarization term R_{sp} denotes a change in polarization state from incident s- polarization to output p- polarization, and the cross polarization term R_{ps} denotes a change in polarization state from incident p- polarization to output s- polarization. In contrast, note that the polarization states of the in-polarization terms R_{ss}, R_{pp} do not change.

In the Office Action, the Examiner asserts, "350 of figure 5 as defined analyzing polarizer [350] has S polarized component and P polarized component [see figure 2] of diffracted beams (342 of figure 6A)." Even assuming, arguendo, that the Examiner's assertion is correct, the polarizer

having S polarized component and P polarized component does not mean that cross polarization components (incident s- polarization to output p- polarization or incident p- polarization to output s-polarization) are being measured.

Additionally, the Taubenblatt reference discloses that an **elliptically polarized** beam is generated by passing a collimated beam of monochromatic light through an **elliptical polarizer** (col. 3, lines 32-41 and col. 5, lines 46-48). The **elliptically polarized** beam is then directed at the surface (col. 3, lines 42-44 and col. 5, lines 47-51). The beam, which scatters from the surface, is then passed through a linear polarizing filter prior to reaching a detector (col. 3, lines 47-52 and col. 5, lines 51-60). Applicants assert that it is well known in the art that it would not be possible to measure the cross polarization component of the diffracted beams in the Taubenblatt reference because the incident beam is **elliptically polarized**.

In light of the above arguments, Applicants assert that the Taubenblatt reference fails to disclose each and every element of claims 1 and 13, and thus the rejection should be withdrawn.

II. Rejection Under 35 U.S.C. 103(b)

A. Claims 2 an 14

Claims 2 and 14 were rejected under 35 U.S.C 103(a) as being unpatentable over the Taubenblatt reference and in view of U.S. Patent No. 4,837,603 (the Hayashi reference).

Applicants assert that claims 2 and 14 are allowable for at least the reason that they depend from allowable independent claims.

B. Claims 10, 22, and 25

Claims 10, 22, 25 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Taubenblatt reference in view of U.S. Patent No. 5,979,244 (the Michaelis reference).

Applicants assert that claims 10 and 22 are allowable for at least the reason that they depend from allowable independent claims.

With regard to independent claim 25, as discussed above, the Tautenblatt reference fails to disclose measuring the cross polarization components of the diffracted beams during the azimuthal scan. The Michaelis reference fails to cure this deficiency because it does not disclose measuring the cross polarization components of the diffracted beams during the azimuthal scan. Accordingly, neither the Tautenblatt reference nor the Michaelis reference individually or in combination disclose all the limitations of claim 25, and thus the rejection should be withdrawn.

III. Allowable Subject Matter

Applicants note that the only objection to claims 3-9, 11-12, 15-21, and 23-24 was their dependence on a rejected base claim. As the rejected base claims are believed to be patentable in view of the above remarks, withdrawal of the objection to claims 3-9, 11-12, 15-21, and 23-24 is requested.

IV. Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 509982005700. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: March 3, 2006

Respectfully submitted,

By _____

Peter J. Yim
Registration No.: 44,417
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
(415) 268-6373

sf-2048793